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1
 2 An act relating to supported decisionmaking authority;
 3 amending s. 393.12, F.S.; requiring a circuit court to
 4 consider certain needs and abilities of a person with
 5 a developmental disability when determining whether to
 6 appoint a guardian advocate; providing requirements
 7 for a petition to appoint a guardian advocate for a
 8 person with a developmental disability and for a court
 9 order if the court finds that such person requires
 10 such appointment; amending s. 709.2201, F.S.;
 11 authorizing an agent acting for a principal to grant a
 12 supported decisionmaking agreement; creating s.
 13 709.2209, F.S.; defining the term "supported
 14 decisionmaking agreement"; prohibiting such agreement
 15 from acting as a durable power of attorney;
 16 authorizing specified authority to a supported
 17 decisionmaking agreement; providing that certain
 18 communications shall be recognized as a communication
 19 of the principal under certain circumstances; amending
 20 s. 744.3201, F.S.; requiring a petition to determine
 21 incapacity of a person to include specified
 22 information relating to the alleged incapacitated
 23 person's use of assistance; amending s. 744.331, F.S.;
 24 providing requirements for an examining committee
 25 member when determining the alleged incapacitated

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26 person's ability to exercise his or her rights;
 27 amending s. 744.464, F.S.; authorizing a suggestion of
 28 capacity to include certain capabilities of the ward;
 29 amending s. 1003.5716, F.S.; revising the requirements
 30 for a specified process relating to individual
 31 education plans for certain students to include
 32 supported decisionmaking agreements; providing an
 33 effective date.

34

35 Be It Enacted by the Legislature of the State of Florida:

36

37 Section 1. Paragraph (a) of subsection (2), paragraph (a)
 38 of subsection (3), and subsection (8) of section 393.12, Florida
 39 Statutes, are amended to read:

40 393.12 Capacity; appointment of guardian advocate.—

41 (2) APPOINTMENT OF A GUARDIAN ADVOCATE.—

42 (a) A circuit court may appoint a guardian advocate,
 43 without an adjudication of incapacity, for a person with
 44 developmental disabilities, if the person lacks the
 45 decisionmaking ability to do some, but not all, of the
 46 decisionmaking tasks necessary to care for his or her person or
 47 property or if the person has voluntarily petitioned for the
 48 appointment of a guardian advocate. In determining whether to
 49 appoint a guardian advocate, the court shall consider the
 50 person's unique needs and abilities, including, but not limited

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51 to, the person's ability to independently exercise his or her
 52 rights with appropriate assistance, and may only delegate
 53 decisionmaking tasks that the person lacks the decisionmaking
 54 ability to exercise. Except as otherwise specified, the
 55 proceeding shall be governed by the Florida Rules of Probate
 56 Procedure.

57 (3) PETITION.—

58 (a) A petition to appoint a guardian advocate for a person
 59 with a developmental disability may be executed by an adult
 60 person who is a resident of this state. The petition must be
 61 verified and must:

62 1. State the name, age, and present address of the
 63 petitioner and his or her relationship to the person with a
 64 developmental disability;

65 2. State the name, age, county of residence, and present
 66 address of the person with a developmental disability;

67 3. Allege that the petitioner believes that the person
 68 needs a guardian advocate and specify the factual information on
 69 which such belief is based;

70 4. Specify the exact areas in which the person lacks the
 71 decisionmaking ability to make informed decisions about his or
 72 her care and treatment services or to meet the essential
 73 requirements for his or her physical health or safety;

74 5. Specify the legal disabilities to which the person is
 75 subject; ~~and~~

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76 6. Identify any other type of guardian advocacy or
 77 alternatives to guardian advocacy that the person has
 78 designated, is in currently, or has been in previously and the
 79 reasons why alternatives to guardian advocacy are insufficient
 80 to meet the needs of the person;

81 7. State whether the person uses assistance to exercise
 82 his or her rights, including, but not limited to, supported
 83 decisionmaking, and if so, why the assistance is inappropriate
 84 or insufficient to allow the person to independently exercise
 85 the person's rights; and

86 ~~8.6.~~ State the name of the proposed guardian advocate, the
 87 relationship of that person to the person with a developmental
 88 disability; the relationship that the proposed guardian advocate
 89 had or has with a provider of health care services, residential
 90 services, or other services to the person with a developmental
 91 disability; and the reason why this person should be appointed.
 92 The petition must also state if a willing and qualified guardian
 93 advocate cannot be located.

94 (8) COURT ORDER.—If the court finds the person with a
 95 developmental disability requires the appointment of a guardian
 96 advocate, the court shall enter a written order appointing the
 97 guardian advocate and containing the findings of facts and
 98 conclusions of law on which the court made its decision,
 99 including:

100 (a) The nature and scope of the person's lack of

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101 decisionmaking ability;

102 (b) The exact areas in which the individual lacks
 103 decisionmaking ability to make informed decisions about care and
 104 treatment services or to meet the essential requirements for his
 105 or her physical health and safety;

106 (c) The specific legal disabilities to which the person
 107 with a developmental disability is subject;

108 (d) The identity of existing alternatives and a finding as
 109 to the validity or sufficiency of such alternative to alleviate
 110 the need for the appointment of a guardian advocate;

111 (e)~~(d)~~ The name of the person selected as guardian
 112 advocate and the reasons for the court's selection; and

113 (f)~~(e)~~ The powers, duties, and responsibilities of the
 114 guardian advocate, including bonding of the guardian advocate,
 115 as provided in s. 744.351.

116 Section 2. Paragraph (d) is added to subsection (2) of
 117 section 709.2201, Florida Statutes, to read:

118 709.2201 Authority of agent.—

119 (2) As a confirmation of the law in effect in this state
 120 when this part became effective, such authorization may include,
 121 without limitation, authority to:

122 (d) If such authority is specifically limited, grant a
 123 supported decisionmaking agreement as defined in s. 709.2209(1).

124 Section 3. Section 709.2209, Florida Statutes, is created
 125 to read:

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126 709.2209 Supported decisionmaking agreements.-
 127 (1) For purposes of this section, "supported
 128 decisionmaking agreement" means an agreement in which the power
 129 of attorney grants an agent the authority to receive information
 130 and to communicate on behalf of the principal without granting
 131 the agent the authority to bind or act on behalf of the
 132 principal on any subject matter.
 133 (2) A supported decisionmaking agreement is not a durable
 134 power of attorney under s. 709.2104. Any language of durability
 135 in a supported decisionmaking agreement is of no effect.
 136 (3) A supported decisionmaking agreement may only include
 137 the authority to:
 138 (a) Obtain information on behalf of the principal,
 139 including, but not limited to, protected health information
 140 under the Health Insurance Portability and Accountability Act of
 141 1996, 42 U.S.C. s. 1320d, as amended; educational records under
 142 the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
 143 s. 1232g; or information protected under 42 U.S.C. s. 290dd-2 or
 144 42 C.F.R. part 2.
 145 (b) Assist the principal in communicating with third
 146 parties, including conveying the principal's communications,
 147 decisions, and directions to third parties on behalf of the
 148 principal.
 149 (4) A communication made by the principal with the
 150 assistance of or through an agent under a supported

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151 decisionmaking agreement that is within the authority granted to
 152 the agent may be recognized for as a communication of the
 153 principal.

154 Section 4. Subsection (2) of section 744.3201, Florida
 155 Statutes, is amended to read:

156 744.3201 Petition to determine incapacity.—

157 (2) The petition must be verified and must:

158 (a) State the name, age, and present address of the
 159 petitioner and his or her relationship to the alleged
 160 incapacitated person;

161 (b) State the name, age, county of residence, and present
 162 address of the alleged incapacitated person;

163 (c) Specify the primary language spoken by the alleged
 164 incapacitated person, if known;

165 (d) State whether the alleged incapacitated person uses
 166 assistance to exercise his or her rights, including, but not
 167 limited to, supported decisionmaking, and if so, why the
 168 assistance is inappropriate or insufficient to allow the person
 169 to independently exercise the person's rights;

170 (e)-(d) Allege that the petitioner believes the alleged
 171 incapacitated person to be incapacitated and specify the factual
 172 information on which such belief is based and the names and
 173 addresses of all persons known to the petitioner who have
 174 knowledge of such facts through personal observations;

175 (f)-(e) State the name and address of the alleged

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176 incapacitated person's attending or family physician, if known;
177 ~~(g)(f)~~ State which rights enumerated in s. 744.3215 the
178 alleged incapacitated person is incapable of exercising, to the
179 best of petitioner's knowledge. If the petitioner has
180 insufficient experience to make such judgments, the petition
181 must so state; and

182 ~~(h)(g)~~ State the names, relationships, and addresses of
183 the next of kin of the alleged incapacitated person, so far as
184 are known, specifying the dates of birth of any who are minors.

185 Section 5. Paragraph (e) of subsection (3) of section
186 744.331, Florida Statutes, is amended to read:

187 744.331 Procedures to determine incapacity.—

188 (3) EXAMINING COMMITTEE.—

189 (e) Each member of the examining committee shall examine
190 the person. Each examining committee member must determine the
191 alleged incapacitated person's ability to exercise those rights
192 specified in s. 744.3215. An examining committee member may
193 allow a person to assist in communicating with the alleged
194 incapacitated person when requested by the court-appointed
195 counsel for the alleged incapacitated person and shall identify
196 the person who provided assistance and describe the nature and
197 method of assistance provided in his or her report. In addition
198 to the examination, each examining committee member must have
199 access to, and may consider, previous examinations of the
200 person, including, but not limited to, habilitation plans,

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201 school records, and psychological and psychosocial reports
 202 voluntarily offered for use by the alleged incapacitated person.
 203 Each member of the examining committee must file his or her
 204 report with the clerk of the court within 15 days after
 205 appointment.

206 Section 6. Paragraph (a) of subsection (2) of section
 207 744.464, Florida Statutes, is amended to read:

208 744.464 Restoration to capacity.—

209 (2) SUGGESTION OF CAPACITY.—

210 (a) Any interested person, including the ward, may file a
 211 suggestion of capacity. The suggestion of capacity must state
 212 that the ward is currently capable of exercising some or all of
 213 the rights which were removed, including the capability to
 214 independently exercise his or her rights with appropriate
 215 assistance.

216 Section 7. Paragraph (d) of subsection (1) of section
 217 1003.5716, Florida Statutes, is amended to read:

218 1003.5716 Transition to postsecondary education and career
 219 opportunities.—All students with disabilities who are 3 years of
 220 age to 21 years of age have the right to a free, appropriate
 221 public education. As used in this section, the term "IEP" means
 222 individual education plan.

223 (1) To ensure quality planning for a successful transition
 224 of a student with a disability to postsecondary education and
 225 career opportunities, during the student's seventh grade year or

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226 | when the student attains the age of 12, whichever occurs first,
 227 | an IEP team shall begin the process of, and develop an IEP for,
 228 | identifying the need for transition services before the student
 229 | with a disability enters high school or attains the age of 14
 230 | years, whichever occurs first, in order for his or her
 231 | postsecondary goals and career goals to be identified. The plan
 232 | must be operational and in place to begin implementation on the
 233 | first day of the student's first year in high school. This
 234 | process must include, but is not limited to:

235 | (d) At least 1 year before the student reaches the age of
 236 | majority, provision of information and instruction to the
 237 | student and his or her parent on self-determination and the
 238 | legal rights and responsibilities regarding the educational
 239 | decisions that transfer to the student upon attaining the age of
 240 | 18. The information must include the ways in which the student
 241 | may provide informed consent to allow his or her parent to
 242 | continue to participate in educational decisions, including:

- 243 | 1. Informed consent to grant permission to access
- 244 | confidential records protected under the Family Educational
- 245 | Rights and Privacy Act (FERPA) as provided in s. 1002.22.
- 246 | 2. Powers of attorney as provided in chapter 709.
- 247 | 3. Guardian advocacy as provided in s. 393.12.
- 248 | 4. Guardianship as provided in chapter 744.
- 249 | 5. Supported decisionmaking agreements as provided in s.
- 250 | 709.2209.

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252 The State Board of Education shall adopt rules to administer
253 this paragraph.

254 Section 8. This act shall take effect July 1, 2024.